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IN THE

Supreme Court of the United States

October Term, 1971.

No. 71-1425.

In the Matter of Penn Central Transportation Company, Debtor.

Central Penn National Bank,
First National Bank of Maryland,
First Wisconsin National Bank of Milwaukee, Wisconsin,
and
National Bank of Detroit,

Petitioners,

v.

Trustees of the Property of The Penn Central Transportation Company,

Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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ARGUMENT.

In an effort to persuade this Court not to review the decision of the Court of Appeals, Respondent's Brief in Opposition (a) under the guise of its Statement of the Case, suggests a hypothetical argument of economic terrorism, namely that the Debtor would have been forced to discontinue rail service if all 142 of its depository banks had exercised set-offs as Petitioners did (Respondent's Brief, p. 2-3, A6), and (b) improperly categorizes National Bank of Detroit's averment of a compensating balance arrangement with the Debtor as a "sham", "wholly negate(d)" by "the only evidence on the record" (Respondent's Brief, p. 16). If supported by the record, these contentions could properly be considered by this Court, after the issuance of a Writ of Certiorari, in determining the ultimate correctness or incorrectness of the decision of the Court of Appeals. However, Petitioners are compelled to make prompt and vigorous reply, in order that this Court, in determining whether Petitioners should be heard, not be misled as to the true state of the evidence in this case.

While the Reorganization Court (A19) and the Court of Appeals (A6) speculated that the Debtor would have been forced to discontinue rail service if all of its 142 depository banks had exercised such set-offs, this Court in determining whether Petitioners should be heard, should consider the actual evidentiary record as certified in this case, which contains no factual basis for such speculation.

The record below is devoid of any evidence as to the details of the credit relationships between the Debtor and its depository banks other than Petitioners; it is devoid of any evidence that such credit relationships would have permitted set-offs by depository banks other than Petitioners; nor does it contain evidence that, even if such

depository banks had credit relationships warranting such set-offs, they would have exercised such rights or that the exercise of such set-offs would, necessarily, have resulted in refusal by all 142 depository banks to honor all of Debtor's checks, or would necessarily have frustrated the reorganization of the Debtor or rendered the continuation of its rail service impossible.

Upon this record the speculation of the Court of Appeals and the Reorganization Court is inapposite.

Respondent's quotation from the testimony of Debtor's treasurer (Respondent's Brief, p. 16) suggesting that no compensating balance arrangement existed with National Bank of Detroit is incomplete, and is a distortion of his testimony, the balance of this relevant testimony is as follows:

> Q. Mr. Shaffer, does the letter not indicate that all moneys in excess of $1,900,000 will be wire transferred—
>
> MR. RHOADS: The letter speaks for itself.
>
> THE COURT: Apparently counsel are of the impression that nobody can read.
>
> BY MR. KESUL:
>
> Q. Excuse me, may I have an answer to that, Mr. Shaffer?
>
> A. What was your question again?
>
> Q. My question is, did not the letter indicate that all moneys in excess of $1,900,000 would be wire transferred? That is the second from the last paragraph in the letter.
>
> A. That is correct.
>
> Q. Does that not indicate moneys below $1,900,000 would not be transferred to Penn Central?
>
> A. That is correct.

Thus, the continuation of the testimony of Debtor's treasurer negates Respondent's characterization and establishes the propriety of Petitioner's argument.

Respondent's Brief in Opposition (p. 16) further states as a fact that "this matter was not raised or urged before the Court of Appeals either in briefs or oral argument by petitioners". Since Petitioners' briefs before the Court of Appeals are not part of the certified record or Appendix before this Court, Petitioners are regrettably unable to refer this Court to the specific pages of their Consolidated Brief and Consolidated Reply Brief before the Court of Appeals in which this matter was specifically raised.

Respectfully submitted,

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